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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA MESSENGER

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation
CC Docket No. 96-98
(Local Competition)

Dear Mr. Caton:

On August 22, 1997, Angela E. Giancarlo, representing the Personal Communications Industry Association ("PCIA"), and Christine M. Crowe, representing PCIA, met with Geraldine Matise, Gregory M. Cooke, Renee A. Alexander, Kent R. Nilsson, and Erin Duffy of the Network Services Division of the Common Carrier Bureau. In the course of the meeting, the participants discussed the functions associated with the administration and opening of central office codes and charges assessed with respect thereto.

An outline of the presentation and a copy of a California Public Utilities Commission ("CPUC") decision pertaining to these issues, were distributed at the meeting. Copies of the presentation outline and CPUC decision are attached. Pursuant to Section 1.1206(b) of the Commission's rules, two copies of this letter and the attached materials are being filed with the Secretary's office, and a copy of this filing is being hand-delivered today to the FCC staff present during the meeting.

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Kindly refer questions in connection with this matter to the undersigned.

Respectfully submitted,

Christine M. Crowe

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for PAUL, HASTINGS, JANOFSKY & WALKER LLP

cc: Robert L. Hoggarth
Angela E. Giancarlo
Geraldine Matise
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PRESENTATION OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

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August 22, 1997

DEFINITION OF TERMS

- The FCC has requested that PCIA define and distinguish between the terms "code assignment," "code activation," and "code opening."

- CO CODE ASSIGNMENT

  - Generally, assignment of central office ("CO") codes is performed by the code administrator for a particular area pursuant to the Central Office Code Assignment Guidelines.

  - Currently, incumbent local exchange companies ("ILECs") perform, through their own employees, the assignment of CO codes to requesting carriers. These CO assignment tasks will be transferred to an independent third party, the North American Numbering Plan Administrator ("NANPA"), pursuant to the NANP Order.

- CO code assignment includes the following functions:
  - Provide applicants with copies of the CO code assignment guidelines.
  - Receive, evaluate and process applications for CO codes.
  - Where a code application is denied, provide in writing specific reasons for the denial and information regarding appeal of denial.
  - Select an unassigned code for assignment.
  - Maintain records on codes assigned plus those available.
  - Collect and forward to the NANPA the Central Office Code Utilization Survey ("COCUS").
  - Concurrent with the assignment of a CO code, input the NPA, NXX, and the Operating Company Number ("OCN") of the code applicant into RDBS and BRIDS.
  - Trouble-shoot regarding problems related to misrouted calls and calls that cannot be completed.
  - Ensure CO code activation within a specified time frame.
  - Notify Bellcore when code exhaustion is imminent.

- CO CODE ACTIVATION

  - Once a CO code has been assigned by the code administrator and placed in the Local Exchange Routing Guide ("LERG"), the CO code assignee activates the CO code in its telecommunications switch. This entails not only making the CO code available, but also turning on each individual number in the CO code.

  - To activate a CO code, the CO code assignee performs the following functions:

    - Develop switch and operational support system translations orders.

    - Input switch and operational support system translations as follows:

      - Input CO code as a working NXX into the NXX table.

      - Input CO code as a home NXX into the appropriate table.

      - Input line numbers (all 10,000 for a complete NXX or specific block numbers for partial NXX) into the Telephone Number ("TN") Table.

      - Input routing translations for new CO code into appropriate tables.

- When a whole CO code is assigned, only the CO code assignee activates the code.

- In the case of partial CO codes, the whole CO code assignee has already activated the entire CO code in the end office serving the partial CO code assignee, and must then input translations to indicate the routing scenario for the specific block of numbers assigned to the partial CO code assignee.

- The partial CO code assignee must input the line numbers for the specific block of numbers it has been assigned.

    - Generally, once the code is activated no further work is required by the whole CO code assignee unless there is a change in the routing of the traffic by the partial CO code assignee.

- CO CODE OPENING

  - Whenever a CO code is assigned, every telecommunications service provider whose traffic may be terminated to the CO code must update the translation table in its switches with the routing instructions contained in the LERG.

  - These translation table updates are accomplished by each telecommunications carrier by: (1) developing switch and operational support system translations, (2) inputing the CO code as a working NXX into the NXX table, and (3) inputing routing translations for the new CO code into appropriate tables.

  - If a telecommunications carrier fails to update its switches, its customers are unable to complete calls to customers with those phone numbers.

  - When a whole CO code is opened, the other telecommunications carriers only place the routing information for the NXX in their switch. No specific routing instructions are necessary on a per number basis.

  - When a block of numbers is assigned out of a CO code, the whole CO code assignee must update the translation table located only at the serving central office to provide the appropriate routing instructions to the partial CO code assignee switch.

- TRANSLATION TABLE MAINTENANCE

  - The maintenance of translation tables is an ongoing function performed with respect to CO codes.

  - Translation table maintenance includes the functions performed by the ILEC and the whole CO code assignee to (1) maintain the accuracy of the tables, and (2) remedy problems experienced in the routing of traffic.

  - As a general matter, CO codes require little maintenance after their initial turn-up, and telecommunications carriers seldom revise existing translation tables unless there is a maintenance problem or a specific request.

CHARGES ASSESSED WITH RESPECT TO CO CODES

- PCIA's members have been and continue to be assessed varying charges by ILECs for CO code activation, CO code opening, and translation table maintenance. Those charges are being summarized by members and submitted in their responses to the Commission's July 31, 1997 request for such information.
    - PCIA also has been advised that some of its members are being assessed additional charges by ILECs for the "reservation" of CO codes.
- Data provided by PCIA's members reflects that, in many instances, the charges assessed appear to be vastly out of proportion to the actual costs incurred by the ILEC to perform these functions.
- In many cases, the functions performed are performed equally by every telecommunications carrier in the market with respect to all CO codes turned-up in an NPA (including those turned up by the ILEC), but only the ILECs charge other carriers for the functions performed.
- In addition, data received from some of PCIA's members indicates that ILECs may be assessing different charges for the same services to different carriers or in different regions.
- PCIA respectfully submits that the charges assessed by ILECs as described above violate the Telecommunications Act of 1996 and the Commission's rules.

THE TELECOMMUNICATIONS ACT AND COMMISSION'S RULES PROHIBIT UNREASONABLE AND DISCRIMINATORY CHARGES WITH RESPECT TO CO CODES

- In the Second Report and Order adopted in the Local Competition proceeding, this Commission "forbid incumbent LECs from assessing unjust, discriminatory, or unreasonable charges for activating CO codes on any carrier or group of carriers ..."
- The Commission also reiterated its prior ruling that "[T]elephone companies may not impose recurring charges solely for the use of numbers."
- These prohibitions were based upon comments filed in that proceeding by numerous commercial mobile radio service ("CMRS") providers which demonstrated that ILECs were charging unreasonable fees with respect to CO codes, including recurring charges solely for the use of numbers.

AT LEAST ONE STATE COMMISSION ALREADY HAS PROHIBITED SUCH CHARGES

- The California PUC ("CPUC") found that "no explicit charge should be imposed on carriers for the costs of opening NXX codes. Each carrier should treat its costs incurred for NXX code openings as part of its normal cost of doing business." (R.95-04-043, I.95-04-044, Cal. PUC, December 20, 1996.)
  - The CPUC defined "code opening" as "the technical reprogramming which each carrier must perform to enable its own switches to recognize a new NXX code each time one is assigned to another carrier."
  - The CPUC found that the opening of additional CO codes is essential to competition, that all carriers incur costs in connection with the opening of new CO codes, and that any requirement that each carrier be reimbursed for such costs would be administratively complex and unwieldy. The CPUC concluded that each carrier should bear its own costs associated with CO code openings.
- In addition, the CPUC prohibited discriminatory charges such as those historically imposed upon CMRS providers. The CPUC stated that:

> ... discriminatory fees of any type would be in violation of the general policies of the FCC as well as the Commission. Therefore, we conclude that Pacific's practice of charging code opening fees to cellular carriers and other CMRS providers is unacceptable since such charges are discriminatory. Since we are denying Pacific authority to charge CLCs for code openings, Pacific should likewise cease immediately any NXX code opening charges to all other categories of carriers, including CMRS providers.

COMMISSION ACTION IS CRITICAL

- Access to numbers on reasonable, non-discriminatory terms is essential to competition.
- The Commission should take this opportunity to require ILECs to comply with the Telecommunications Act and the Commission's Rules.
- In light of the FCC and CPUC pronouncements, ILECs should be prohibited from assessing charges for code assignment, code activation, code opening, and translation table maintenance functions (as defined above).
- The Commission should order ILECs to cease immediately assessing these charges so that all carriers have reasonable, non-discriminatory access to numbers.
- Should ILECs continue to assess such charges, the Commission must strictly prohibit ILECs from continuing to assess different charges for the same services in different geographic areas or to different carriers. Such discrimination on its face violates the Telecommunications Act and the Commission's rules.

Mailed

DEC 2 3 1996

Decision 96-12-067 December 20, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service.	R.95-04-043 (Filed April 26, 1995)
Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service.	I.95-04-044 (Filed April 26, 1996)

OPINION

By this decision, we resolve the outstanding dispute over whether explicit charges should be imposed on telecommunications carriers for recovery of NXX code opening costs. We conclude that no explicit charge should be imposed on carriers for the costs of opening NXX codes. Each carrier shall treat its costs incurred for NXX code openings as part of its normal cost of doing business.

Procedural Background

Pacific Bell (Pacific) initially sought to recover its costs for NXX code openings from competitive local carriers (CLCs) in Phase II of this proceeding. By ALJ Bench ruling on October 30, 1995, during the Phase II hearings, this issue was deferred to Phase III. In D.96-03-020, we directed Pacific to establish a memorandum account to track the number of NXX codes opened for each CLC pending resolution of the ratemaking issue in Phase III.

By ALJ ruling dated May 3, 1996, comments were solicited on the policy issue of whether NXX code opening charges should be authorized at all. The ruling indicated that the Commission would make an initial determination of whether authorization of any NXX code opening charges was an appropriate public policy. Only if the Commission found that authorization of such charges was appropriate would evidentiary hearings be held to quantify a rate. Comments were received on May 17, 1996. A subsequent ALJ ruling issued on September 17, 1996, called for supplemental comments regarding the impacts of the Federal Communications

Commission (FCC) rules issued on August 8, 1996, on this issue (FCC 96-333 Second Report and Order). Supplemental opening and reply comments were received on October 15 and 25, 1996, respectively. Comments were filed by Pacific Bell (Pacific), GTE California (GTEC), the California Telecommunications Coalition (Coalition),[1] MCI Telecommunications, AT&T Communications (AT&T), Toward Utility Rate Normalization (TURN), and ICG Telecommunications Group, AirTouch Cellular, and the Office of Ratepayer Advocates (ORA).

Based upon consideration of parties' arguments in filed comments, we have concluded that no NXX code opening charges are appropriate, and therefore, no evidentiary hearings are necessary on the issue of NXX code opening charges.

Positions of Parties

Pacific

Pacific argues that each network provider should be able to charge for opening NXX codes in its network, including the incremental cost of the software and other changes associated with the new NXX. Pacific proposes two alternatives for cost recovery: (1) charge the requesting carrier on a per NXX opened basis; or (2) employ an all end-user surcharge applicable to all telecommunications end-users.

Pacific identifies two primary activities which it must perform once for each opening of a new NXX code. First, Pacific must update its routing and rating system databases for each new code opened. Second, for each new NXX code, Pacific's Switching Centers must update each central office (CO) switch and then translate the new NXX code into each of the appropriate CO switches (including tandem switches). All CO switches within the NXX code's Numbering Plan Area (NPA), as well as any CO switch that has direct trunking to another end office within the affected NPA, must have the new code translated in the switch.

Pacific claims that it will incur between $2 and $6 million in the first year just to open new NXX codes for one CLC; and over a five-year period, between $6 and

[1] The members of the Coalition joining the May filing were: AT&T Communications of California, Inc.; California Cable Television Association, California Association of Long Distance Telephone Companies; ICG Access Services; MCI Telecommunications Corp.; Sprint Communications Co., L.P.; Teleport Communications Group; and Time Warner AxS of California, L.P. Toward Utility Rate Normalization's non-joinder does not indicate disagreement, but rather an inability to review the pleading before the filing date.

$20 million. To open new NXX codes for just 5 CLCs, Pacific estimates approximately $13 to $31 million in costs in the first year, and between $46 million and $110 million over a five-year period. (R. Scholl Testimony/Pacific.) Without an explicit charge reflecting these costs, Pacific argues, there are no economic incentives for CLCs to use codes efficiently or appropriately, thereby unnecessarily increasing the costs of processing code requests and accelerating code exhaust. Pacific believes these added costs should be borne by the cost-causer, the carrier requesting the new code, in order for the Commission's goal of economic efficiency to be met. Additionally, Pacific objects to being required to incur these costs without any opportunity for recovery. Unlike its competitors, Pacific argues that it essentially lacks the ability to increase prices to make up for this added cost since most of its services are priced at their ceilings. Denial of the opportunity to recover these costs is contrary to the principles of the New Regulatory Framework (NRF) according to Pacific.

Pacific believes that charging for NXX code openings is consistent with a policy already established by the FCC which allows telephone companies to impose NXX assignment charges on cellular carriers. The FCC stated that it "intended to establish that interstate charges for opening NXX codes should be cost based and that it regarded cost based NXX charges, like cost based physical interconnection charges, as an inherent part of reasonable interconnection."[2] Pacific argues that it has followed the traditional principles of LEC-to-LEC interconnection arrangements and has charged, as well have been charged by, other independent telephone companies by means of Settlement Agreements. Alternate access providers have been charged under GO 96-A contracts and cellular carriers have been charged under the terms of interconnection contracts.

Position of GTEC

GTEC believes that, as a general matter, neither Pacific nor GTEC should charge CLCs or each other for the administrative act of opening a new NXX code or for maintaining the database tables that translate the NXX code into network routing elements. GTEC believes charges should be allowed, however, in those few cases where

[2] The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Report No. CL-379, Declaratory Ruling, 2 FCC Rcd 2910 (1987); and see Mr. Abercrombie (for Pacific) Exh. 22, p. 51.

the NXX code opened by another carrier does not reside in that carrier's own switch, but in the other carrier's switch.

When a new NXX code is opened, all carriers must update their database translation tables so that calls to the new prefix can be routed over the appropriate trunks and tandem switches. It would be extremely impracticable, in GTEC's view, for carriers to charge each other for the effort that each must undertake to update its own tables whenever another carrier opens a new NXX code.

GTEC proposes that charges for code openings apply only in the situation where a carrier chooses to have its newly assigned NXX code reside in the switch of another carrier. In that instance, the other carrier would incur equipment and labor costs in programming its switch in order for the other carrier's NXX code to reside there. GTEC believes each carrier is entitled to charge for the costs of performing these functions because the other carrier is not able to avoid these charges by having their NXX codes reside in their own switch.

Coalition and ORA

The Coalition and ORA filed joint comments in May 1996 on this issue. Separate comments were filed in October 1996 by various CLCs who belong to the Coalition and also by ORA. The Coalition and ORA believe that no charge can be fairly assessed on CLCs by the incumbent local exchange carriers (LECs) for the "costs" of code opening. The Coalition states that all service providers—incumbents and CLCs—alike must program new NXXs in their switches, regardless of the service provider to which the NXX is assigned and regardless of the location of the service provider. Therefore, the Coalition views the costs of code opening as simply a cost of doing business for all carriers, i.e., the business of enabling call routing and completion over the telephone network. The Coalition and ORA claim that the long-standing historic practice of LECs not charging each other for code opening costs should simply be continued, and that it would be inconsistent with the Commission's procompetitive goals to begin charging CLCs for code openings. Such a practice would constitute a functional economic barrier to entry into the marketplace in the Coalition's view, would frustrate facilities-based local exchange competition, and would violate the competitive neutrality requirements of the Telecommunications Act of 1996 (TA96).

AirTouch

AirTouch argues that under the current practice, Pacific imposes substantial code opening charges on Commercial Mobile Radio Service (CMRS)

imposing code opening charges is consistent with the nondiscriminatory principle embodied in the FCC rules.

Discussion

providers, but does not charge other incumbent LECs, such as GTE, Citizens or Roseville, for opening codes. Under the FCC's ruling, "LECs must...treat other carriers as the incumbent LEC would treat themselves." (Report and Order at 332.) Thus, AirTouch contends that Pacific similarly must refrain from imposing charges on CMRS providers in order to comply with the antidiscrimination prohibitions of the Communications Act, consistent with the long standing federal mandates for equitable distribution of NXX codes as a "critical resource"[3] and mutual compensation for interconnection charges. See Cellular Interconnection (Declaratory Ruling), 2 FCC Rcd 2910, 2912, 2914 (1987) ("we expect the LECs and cellular carriers to negotiate interconnection agreements under which the charges for opening NXX codes and other interconnection charges will be mutually imposed and cancelled out as applicable.")

AirTouch argues that Pacific's differentiated charges constitute unreasonable discrimination, discriminatory access to telephone numbers, and unjust practices and charges in violation of the Act which requires that any incumbent LEC charging competing carriers fees for assignment of codes may only do so if the LEC charges a "uniform fee" for all carriers, including itself or its affiliates.

While Pacific claims that significant "costs" are incurred, AirTouch notes that other LECs, including GTEC, do not charge any code opening fee. AirTouch submits that the minimal costs arising from updating switches to open new NXX codes are simply the costs of doing business and, inasmuch as they affect all carriers equally, should be borne by each carrier.

Effects of the FCC Second Report and Order

In response to the ALJ ruling soliciting comments on the effects of the FCC Second Report, all parties concluded that the FCC Order did not change their previously held positions regarding the merits of instituting code opening charges. Pacific interpreted the FCC rule to lend support to its proposal for code opening charges. Pacific believes that the FCC directive that "code opening fees" be nondiscriminatory was intended to include both code "assignment" as well as "activation" or "opening" of the code. The remaining parties interpreted the FCC Second Report as focusing on only code "assignment" fees, but not the code "opening" fees which Pacific seeks to recover. The remaining parties believe that refraining from

[3] Report and Order at 141.

imposing code opening charges is consistent with the nondiscriminatory principle embodied in the FCC rules.

Discussion

As a beginning point, we must define what costs are included within the term "code opening costs," as it applies to Pacific's cost recovery proposal. The process of opening new NXX codes can be separated into two distinct categories of activities. The first category involves the code assignment functions which Pacific performs as the designated California Code Administrator (CCA). These costs are incurred only by the CCA and have no counterpart activity among other carriers. The second category of activities involves the technical reprogramming which each carrier must perform to enable its own switches to recognize a new NXX code each time one is assigned to another carrier. For purposes of this decision, "code opening costs" refer only to those costs associated with the second activity. It is only the second category of activities for which Pacific seeks to impose a "code opening" charge on other carriers.

The FCC Second Order makes reference to "code opening" fees in discussing the role of an incumbent LEC serving as a code administrator. The FCC stated that all carriers must be treated the same with respect to "code opening" fees (332, 333). The context of the FCC's discussion of "code opening" fees makes it apparent that the use of the term is limited only to those code administration functions performed by the incumbent LEC. There is no discussion by the FCC in the Second Order of recovery of reciprocal charges between CLCs and LECs for the ubiquitous costs that all carriers incur on their own networks for collectively opening new NXX codes of each other. Accordingly, we conclude that there is nothing in the FCC Second Order that mandates a separate wholesale charge for the specific category of those "code opening" costs for which Pacific seeks to charge CLCs.

We find that the arguments offered by Pacific to justify the establishment of NXX code opening charges on CLCs are unpersuasive. We conclude that each carrier should bear its own costs incurred to open codes assigned to another carrier as a normal cost of doing business. The ubiquitous opening of each new code by all carriers is necessary to enable call routing and completion over the telephone network regardless of which carrier holds a given NXX code. While Pacific has historically incurred costs for the opening of NXX codes for other incumbent LECs, Pacific has refrained from explicitly charging other incumbent LECs for such code openings. While Pacific claims that recovery of such costs are included within Settlement Agreements between LECs, it

is not clear precisely what costs were attributable to NXX code openings or how they compare with those which Pacific seeks to charge CLCs. We conclude that CLCs should not be discriminated against with respect to code opening treatment, but should be accorded the same treatment as incumbent LECs.

We disagree with Pacific's premise that because a carrier requires a new NXX code to be opened, that carrier "causes" the costs incurred by other carriers to open that code, and thus that carrier should be responsible for reimbursing all other carriers' costs involved in opening that code in their own switched networks. While Pacific characterizes the carrier requiring a new code as the "cost causer," the carrier's request for a new code is merely an initial triggering action. Many other factors "cause" the costs incurred by each carrier for opening new NXX codes, including the size of the carrier's network, the number of switches involved, and the operational efficiencies of each carrier. The carrier requesting a code opening has no control over such causal factors as they apply to every other carrier's operations. Moreover, the opening of new codes is a necessary prerequisite for a carrier to enter a market and is not discretionary. Based upon the principle of "cost causation," we, therefore, find no justification for imposing a charge on the carrier requiring the code opening. A carrier requiring a code opening should not be responsible for reimbursing internal operational costs applicable to other carriers over which it has no control.

Denial of the request to impose a wholesale NXX code opening charge, means that each carrier must bear responsibility for its own incurred costs for code openings of other carriers. Likewise, each carrier will be relieved of paying every other carrier terminating traffic on its network for code openings which it requires. In cases where carriers are roughly equal in size and are opening approximately the same number of NXX codes, the reciprocal impacts among carriers would tend to balance out over time. While Pacific would not recover from other carriers its code opening costs, it would be relieved of paying other carriers for its own code openings.

In the case of Pacific, however, there is a significant disparity in size and in the number of new NXX code openings between it and the CLCs. Thus, Pacific incurs greater costs for code openings in aggregate dollars than does a CLC because of Pacific's much larger network. There is a direct correlation between the number of a carrier's switches requiring new code translations and the costs incurred by that carrier for code openings. We do not find however, that differences between carriers in terms of aggregate costs incurred for code openings by other carriers signify any unfairness or

discriminatory treatment. To the extent that Pacific opens fewer new codes than do CLCs and to the extent each new code opening involves more switch translations for Pacific than for CLCs, Pacific will incur more new costs than it saves, assuming it pays no code opening charges to other carriers. Conversely, however, if a reciprocal NXX code opening charge was authorized for all carriers, CLCs would pay a disproportionate share of their revenues to Pacific corresponding to the disproportionate size of Pacific's network in relation to that of the CLCs.

Pacific's argument in favor of imposing a separate code opening charge essentially focuses on the differences in size and incumbent status of Pacific relative to the CLCs. While Pacific's larger size causes it to incur relatively higher costs per code opening compared with a CLC, the larger size also gives Pacific advantages over the CLC. Pacific's larger size and incumbent status gives it the advantage of having a much larger market share and greater financial resources with which to compete. The higher costs per code opening incurred by Pacific is simply a function of its greater size. While its aggregate costs are greater, on a per-switch basis, Pacific's code opening costs are in the same range as those of CLCs. There is nothing inherently unfair about Pacific incurring higher costs per code opening than the CLC as long as the cost is in proportion to its overall size and resulting market share. Moreover, while GTEC shares many of Pacific's characteristics as a large incumbent LEC, GTEC does not claim there is any unfairness in requiring GTEC to bear its own code opening costs.

In addition to Pacific's higher cost per code opening, there is also a difference in the number of new code openings required by Pacific relative to that of the CLCs. As new market entrants, CLCs can be expected to require a disproportionately higher number of new code openings relative to Pacific as the entrants seek to build market share. Without authority to charge for NXX code openings, this imbalance in new code openings would cause Pacific to incur greater expenses for opening other carriers' NXX codes than it would save from avoiding payments to other carriers for opening Pacific's new NXX codes. Conversely, if code opening charges were authorized, CLCs would be disadvantaged by having to pay more to Pacific for code openings than would Pacific pay to them for its own code openings.

We conclude that merely because there are differences in the relative number of new code openings between the CLCs and Pacific, these differences do not justify imposition of a code opening charge on carriers. While Pacific will be opening fewer new NXX codes for itself in comparison with the CLCs, this is because Pacific, as

the largest incumbent LEC in the state, already has opened a large number of NXX codes for its own use. As noted by Pacific, its internal costs to open codes for itself are considered part of shared common costs and recovered in retail rates. Nonetheless, CLCs must incur costs to program their switches to recognize Pacific's NXX codes without any recovery of those costs from Pacific. Therefore, any claimed disadvantage which Pacific asserts due to imbalances in the relative number of new code openings is amply offset by the advantage Pacific has enjoyed through its incumbent holdings of NXX codes as a monopoly provider of local exchange service free from any prior payments to CLCs for those existing NXX codes.

We conclude that imposition of separate NXX code opening charges by each carrier on all others could impose a significant impediment to CLC market entry as a function of what level of charge was established and would be discriminatory. Based upon Pacific's proposed NXX code opening charges, carriers wanting to open NXXs in the most populated NPAs would have to pay up to six times as much as those within other NPAs. (Exhibit 11/Abercrombie/Pacific.) Aside from the economic barriers to entry from imposing code opening charges, it would create a huge regulatory bottleneck as separate cost studies would have to be prepared and potentially litigated or arbitrated, not just for Pacific, but for each carrier under our jurisdiction who would seek to impose code opening charges on other carriers. Even assuming such a regulatory hurdle could be somehow surmounted, it would still be administratively cumbersome and inefficient for every carrier to be flooded with billings from every other carrier terminating traffic on its network, charging for every code opening which occurs. Such an outcome is unreasonable.

Since we conclude that the imposition of reciprocal code opening charges among wholesale carriers is not appropriate, we shall terminate further inquiry regarding the reasonableness of the NXX code opening charges as proposed in Pacific's testimony of witness Scholl and Abercrombie which was deferred from Phase II. We shall not admit this testimony into evidence. We also need not address further any questions concerning nondiscriminatory affiliate pricing of code opening charges by the LECs. Although the FCC Second Report and Order does not specifically address code opening charges which are at issue here, discriminatory fees of any type would be in violation of the general policies of the FCC as well as the Commission. Therefore, we conclude that Pacific's practice of charging code opening fees to cellular carriers and other CMRS providers is unacceptable since such charges are discriminatory. Since we

are denying Pacific authority to charge CLCs for code openings, Pacific should likewise cease immediately any NXX code opening charges to all other categories of carriers, including CMRS providers.

While we shall not authorize separate charges for recovery of code opening costs on a carrier's own network, we shall grant the request of GTEC to permit carriers to impose a charge for housing another carrier's NXX codes. This proposal was opposed by MCI, AT&T, TURN, and ICG who argue that it would stand in the way of network optimization and efficient interconnection to allow a carrier to impose NXX code opening charges when another carrier has housed an NXX code in its switch. Yet, GTEC argues that there may be legitimate reasons why a carrier may want to house its NXX code in another carrier's switch. For example, a facilities-based carrier may want to house its NXX code on an interim basis in another carrier's switch so it may begin providing facilities-based service prior to cutover to its own switches. We shall preserve the flexibility for parties to enter into interconnection agreements which provide for NXX openings on another carrier's network. In those instances only, we conclude that charges for housing another carrier's NXX codes is reasonable. We shall leave it to parties negotiating such arrangements to mutually agree on appropriate compensation.

Findings of Fact

1. The code opening costs for which Pacific seeks to impose an explicit charge involve the technical reprogramming of switches which each carrier must perform to enable its own switches to recognize a new NXX code assigned to another carrier.

2. The FCC discussion of "code opening" fees is limited only to those code administration functions performed by the incumbent LEC.

3. There is no discussion by the FCC in the Second Order of recovery of reciprocal charges between CLCs and LECs for the ubiquitous costs that all carriers incur on their own networks for collectively opening new NXX codes for each other.

4. NXX code opening costs constitute normal costs of doing business incurred by each carrier which must reprogram its switches and related software to recognize the NXX code of another carrier terminating traffic on its network.

5. Pacific incurs greater costs for code openings in aggregate dollars than does a CLC because of Pacific's much larger network.

6. On a per-switch basis, however, Pacific's code opening costs are in the same range as those of the CLC.

Conclusions of Law

1. The arguments offered by Pacific to justify the establishment of NXX code opening charges for CLCs are unpersuasive.

2. The FCC Second Report and Order does not address the issue of imposing a separate charge for the specific category of "code opening costs" for which Pacific seeks to charge CLCs and other carriers including cellular and paging.

3. Based upon the principle of "cost causation," there is no justification for imposing a code opening charge on the carrier requiring the code opening.

4. A carrier requiring a code opening should not be responsible for reimbursing all other carriers' code opening costs related to operating factors over which it has no control.

5. Any claimed disadvantage due to imbalances in the relative number of Pacific's new code openings compared with CLCs is amply offset by the advantage Pacific has enjoyed through its incumbent holdings of NXX codes as a monopoly provider of local exchange service free from any prior payments to CLCs.

6. Imposition of separate NXX code opening charges by each carrier on all others could impose a significant impediment to CLC market entry depending on what level of charge was established, would be discriminatory, and administratively cumbersome and inefficient to administer.

7. It is reasonable for a carrier to impose a charge for housing another carrier's NXX codes on its own network.

8. No evidentiary hearings are necessary to address NXX code opening charges.

ORDER

IT IS ORDERED that:

1. The proposal of Pacific Bell (Pacific) for authority to charge competitive local carriers a charge for NXX code opening costs is hereby denied.

2. Pacific shall cease and desist effective immediately from charging NXX code opening fees to other categories of telecommunications carriers, including CMRS providers.

3. Pacific shall terminate its memorandum account for tracking of NXX code openings for the purpose of establishing NXX charges, as previously authorized by D.96-03-020, effective immediately.

This order is effective today.

Dated December 20, 1996, at San Francisco, California.

P. GREGORY CONLON
President
DANIEL Wm. FESSLER
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners